IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12308 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDRAVADAN PURSHOTTAMDAS SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12308 of 2004

MR MEHUL H RATHOD for Petitioner No. 1

MR HASURKAR, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/02/2005

ORAL JUDGEMENT

RULE. Learned AGP waives service on behalf of the respondents. At the joint request of learned advocates appearing for the parties, this petition is taken up for

final disposal today.

2. In this petition, the petitioner has challenged the order dated 26-2-1998 passed by the respondent No.2, by which the allotment of plot of land granted in favour of the petitioner pursuant to a draw of lots which took place on 22-1-1991 came to be cancelled. The petitioner has also challenged the order dated 31-12-2003 by which a revision petition of the petitioner also came to be rejected.

3. Short facts leading to the present petition are that the petitioner who is a State Government servant had applied for being granted a plot of land in Gandhinagar pursuant to the policy of the Government formulated through a Government Resolution dated 29-6-1988 and as modified by subsequent Government Resolution dated 23-1-1990. The petitioner claims to be fulfilling all the conditions of the said two Government Resolutions. His application was in fact accepted, processed and for drawing of the lots which took place on 22-1-1991 his application was considered. Since the petitioner's application was accepted in the said lots, he was asked to deposit an amount of Rs.9,000/- towards plot No.849/2 admeasuring 90 sq.mts., situated in Sector-5 of Gandhinagar. The petitioner duly deposited the said amount with the Government.

4. Subsequently, however, after a gap of nearly six years, the respondent No.2 passed an order dated 26-2-1998 by which he was pleased to cancel the allotment of plot of land in favour of the petitioner. The reason indicated in the said order, which is impugned by the petitioner in the present petition is that the petitioner has produced a certificate dated 30th March, 1993 from which it is not clearly emerging that the petitioner was liable to be transferred to Gandhinagar as on 31-12-1988. As noted earlier, the revision petition filed by the petitioner also came to be rejected.

5. Learned counsel for the petitioner has submitted that the action of the respondents was illegal and unlawful. He submitted that when the allotment was granted in favour of the petitioner after verifying all details disclosed by him in his application, there was no scope for recalling such allotment after a gap of six years and that too without hearing the petitioner. He further submitted that the service of the petitioner was transferrable to Gandhinagar and in fact at present also the petitioner is on deputation and posted at Gandhinagar.

6. Mr.Hasurkar, learned AGP, sought to support the impugned orders.

7. From the above discussion, it is clear that the petitioner was allotted a plot of land in Gandhinagar pursuant to a Government policy. His application was processed and accepted, having been found in order. Once this was done and the petitioner was directed to deposit the necessary amount towards allotment of the plot, which the petitioner had also done, it was not open for the respondents to cancel the allotment unilaterally without hearing the petitioner. Admittedly, no notice or any other form of opportunity was given to the petitioner to represent his case and to meet with the objections raised by the Collector before his allotment was cancelled. The impugned order, therefore, cannot be allowed to sustain and the same is quashed and set aside only on the ground of non-hearing the petitioner before passing the order dated 26-2-1998. The further order by which the revision petition of the petitioner was rejected is also set aside.

8. The issue is remanded back to the Collector for fresh hearing and for taking a decision afresh after giving an opportunity to the petitioner to represent his case. Since the objection of the Government is on record by now, it would be sufficient if the Collector passes a fresh order after permitting the petitioner to produce on record his representation and additional material, if he so desires, which he may do within a period of four weeks from today. The Collector shall take a final decision within a period of three months from the date of receipt of the representation from the petitioner. If the petitioner prays for personal hearing, the respondent No.2 shall consider such a request. During such time i.e. the respondent No.2 takes a fresh decision, the interim protection granted by this Court by order dated 27th June, 2004 shall continue.

9. With these directions, this petition is allowed to the above extent. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)
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